

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

DON BLANKENSHIP,

Plaintiff,

vs.

**HONORABLE ANDREW
NAPOLITANO (RET.);
FOX NEWS NETWORK, LLC;
...**

GANNETT CO, INC;

and

MIKE ARGENTO

Defendants.

Case No.: 2:19-cv-00236

[Honorable John T. Copenhaver, Jr.]

MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

NOW COMES Defendant Michael Argento,¹ pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure and other applicable law, and moves this Honorable Court for an Order dismissing all claims asserted against him in Plaintiff's Amended Complaint on the basis that this Court lacks personal jurisdiction. This Court, sitting in diversity, may not properly exercise personal jurisdiction over Mr. Argento under the West Virginia long-arm statute and in a manner consistent with constitutional Due Process. In support of his Motion, Mr. Argento respectfully states as follows:

1. Plaintiff Don Blankenship filed this action in the Circuit Court of Mingo County, West Virginia on March 14, 2019. The case was properly removed to this Court and a Motion to Remand was denied by Order of this Court dated July 17, 2019. *See Dkt. #134*. An Amended

¹ Mr. Argento is referred to in the case caption as "Mike Argento."

Complaint, filed on April 9, 2019, attempts to state claims for *Defamation/Conspiracy to Defame* and *False Light Invasion of Privacy/Conspiracy* based, for the most part, on references by the numerous Defendants to Plaintiff as a “felon.”

2. Mr. Argento is a reporter and columnist employed by the York Daily Record since 1982. Mr. Argento is a resident of Windsor Township, York County, Pennsylvania and has worked, for thirty-seven (37) years, at the only office maintained by the York Daily Record, located in York, York County, Pennsylvania. Mr. Argento writes exclusively for the York Daily Record, which is circulated in York County and surrounding areas.

3. Mr. Argento has never been registered to conduct business or otherwise licensed in West Virginia and has taken no action to avail himself of the privilege of doing business in West Virginia. He owns no property in West Virginia and did not contact or communicate with anyone in West Virginia in the course of writing his column titled “*Women Sue for Right to Go Topless in O.C.*,” originally published May 27, 2018 (the “Article”) that is the subject of this lawsuit. *See Affidavit of Michael Argento, attached hereto as EXHIBIT A and incorporated here.*

4. Mr. Argento’s Article provided commentary on a matter of public interest and debate in York, Pennsylvania and surrounding areas and referenced Mr. Blankenship peripherally, with respect to his reference to Chinese people as “China-persons.” The Article was not directed or targeted to anyone in the State of West Virginia and has no connection to West Virginia.

5. Plaintiff’s Amended Complaint identifies Mr. Argento only as “an individual domiciled in the State of Pennsylvania” and “a reporter for the York Daily Record.” ¶127 *Amended Complaint*. Plaintiff’s allegation is wholly insufficient to make a prima facie showing that Mr. Argento is subject to the personal jurisdiction of this Court. *See Affidavit of Michael Argento attached hereto as EXHIBIT A and incorporated herein.*

6. West Virginia's long-arm statute, W.Va. Code §56-3-33, does not confer personal jurisdiction over Mr. Argento. His complete lack of contacts with West Virginia renders the exercise of jurisdiction over him inconsistent with constitutional due process and contrary to controlling authority in the Fourth Circuit.

7. Plaintiff has failed to allege any facts in his Amended Complaint that would even arguably support personal jurisdiction over Mr. Argento in this Court.

8. As set forth in the accompanying Memorandum in Support of this Motion, this Court may not exercise personal jurisdiction over Mr. Argento. Accordingly, all of Plaintiff's claims against Mr. Argento set forth in the Amended Complaint should be dismissed.

WHEREFORE Defendant Michael Argento respectfully requests that this Honorable Court grant his Motion to Dismiss for Lack of Personal Jurisdiction, dismiss all claims asserted against him by Plaintiff and for such other and further relief as this Court deems just and proper, including an award of attorney fees and costs, if permitted.

/s/ Holly S. Planinsic

Holly S. Planinsic
W.Va. State Bar I.D. #6551
HERNDON, MORTON, HERNDON & YAEGER
83 Edgington Lane
Wheeling, West Virginia 26003
Telephone: (304) 242-2300
Fax: (304) 243-0890
E-mail: hplaninsic@hmhy.com

Robert P. Fitzsimmons, Esq.
W.Va. State Bar I.D. #1212
FITZSIMMONS LAW FIRM PLLC
1609 Warwood Ave
Wheeling WV 26003
Phone: (304) 277-1700
Fax: (304) 277-1705
E-mail: bob@fitzsimmonsfirm.com

Counsel for Defendant Michael Argento